



# Securities Offerings Under Regulation Crowdfunding

WHAT YOU SHOULD KNOW

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SECTION 1

# Introduction

## SECTION 1: INTRODUCTION

The Securities Act of 1933 (the “Securities Act”) sets forth the rules and regulations governing a company’s sale of equity securities in the United States, known as a primary offering, with the most well-known type of primary offering being the initial public offering. Primary offerings under the Securities Act are either registered, unregistered, or exempt from registration.

In an initial public offering, which is a registered primary offering, a company will prepare and file a comprehensive disclosure document called a registration statement with the U.S. Securities and Exchange Commission (the “SEC”), which triggers the SEC’s filing review process in which they will review the registration statement for compliance with the Securities Act’s disclosure requirements. Registered primary offerings are time- and capital-intensive ventures, with the initial public offering being the most expensive.

A violation of Section 5 of the Securities Act occurs when there is an unregistered primary offering (i.e., no registration statement is filed) that is not exempt from the registration requirements of Section 5 of the Securities Act (15 U.S.C. 77e). However, companies can avoid the Securities Act’s registration requirements by performing what is called an exempt primary offering, or an exempt offering. There are several types of exempt offerings, each with their own rules and regulations that require varying levels of disclosure. A more recent addition to the exempt offering category that has become very popular is an exempt offering under Regulation Crowdfunding (17 CFR § 227.100 – 504).

### 1.1 Background

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Exempt offerings under Regulation Crowdfunding (“Crowdfunding Offerings”) have become an increasingly popular way for start-up companies to raise capital. In 2022, the global crowdfunding market was valued at \$1.25 billion and is projected to grow to \$3.62 billion by 2030, with a compound annual growth rate of 14.5%. See Crowdfunding Market Size, Share & COVID 19 Impact Analysis for more information. The popularity of Crowdfunding Offerings can be attributed to the lower cost of complying with Regulation Crowdfunding’s disclosure requirements and the increased speed at which an offering can be initiated (in each case, relative to other types of exempt offerings). At Bevilacqua PLLC, we have seen an uptick in start-up interest in performing Crowdfunding Offerings that is in line with the positive trends in the alternative financing industry.

The U.S. legislature enabled the SEC’s creation of Regulation Crowdfunding and likewise, the ability to perform Crowdfunding Offerings, in 2012 when it passed the Jumpstart Our Business Startups Act (the “JOBS Act”). Specifically, the JOBS Act amended Section 4 of the Securities Act to add Subsection 4(a)(6) (15 U.S.C. 77d(a)(6)), setting forth the basic requirements of Crowdfunding Offerings and permitting the SEC to promulgate Regulation Crowdfunding.

SECTION 2

# Regulation Crowdfunding Overview

## SECTION 2: REGULATION CROWDFUNDING OVERVIEW

<b>Maximum Offering Amount</b>	Issuers seeking to perform a Crowdfunding Offering (each a “Crowdfunding Issuer”) are limited to raising up to \$5,000,000 on a rolling 12-month basis.
<b>Investor Purchasing Limitation</b>	<p>Accredited Investors: No Limitations                      Non-Accredited Investors:</p> <ol style="list-style-type: none"> <li>(1) Up to \$2,500, or 5% of gross annual income or net worth (or revenue or net assets for a non-natural person), whichever is greater, if the person has a gross annual income or net worth or gross revenue (or revenue or net assets for a non-natural person) that is less than \$124,000.00; or</li> <li>(2) Up to \$124,000 or 10% of gross annual income or net worth (or revenue or net assets for a non-natural person), whichever is greater, if the person has a gross annual income or net worth (or revenue or net assets for a non-natural person) that exceeds \$124,000.</li> </ol>
<b>Intermediary Involvement</b>	Each regulation Crowdfunding Offering must be conducted through a single online platform called an Intermediary. The Intermediary will be either a Broker-Dealer or a Funding Portal.
<b>Ineligible Entities</b>	<ol style="list-style-type: none"> <li>(1) Non-U.S. companies (but not the subsidiary of non-U.S. Company);</li> <li>(2) Exchange Act reporting companies;</li> <li>(3) Certain types of investment companies;</li> <li>(4) Companies that are disqualified from using Regulation Crowdfunding due to certain matters, like violating any law that prohibits fraudulent, manipulative, or deceptive conduct within the past ten (10) years;</li> <li>(5) Companies that have failed to comply with their ongoing reporting requirements under Regulation Crowdfunding for the two years immediately preceding the filing of an Offering Statement under Regulation Crowdfunding;</li> <li>(6) Blank check companies that have no specific business plan or special acquisition companies whose business plan involves a merger or acquisition with an unidentified target or targets.</li> </ol>
<b>The Offering Statement on Form C</b>	Any issuer conducting a Regulation Crowdfunding offering must file its Offering Statement on Form C (each, an “Offering Statement”) with the SEC through the EDGAR system and with the Intermediary facilitating the Crowdfunding Offering.
<b>Significant Disclosure Requirements</b>	<ol style="list-style-type: none"> <li>(1) information about officers, directors, and owners of twenty (20) percent or more of the issuer;</li> <li>(2) a description of the issuer’s business and the use of proceeds from the offering;</li> <li>(3) the price to the public of the securities or the method for determining the price,</li> <li>(4) the target offering amount and the deadline to reach the target offering amount,</li> <li>(5) whether the issuer will accept investments in excess of the target offering amount;</li> <li>(6) certain related-party transactions; and</li> <li>(7) a discussion of the issuer’s financial condition and financial statements.</li> </ol>

<p><b>Financial Statement Requirements for First-Time Crowdfunding Issuers</b></p>	<p>First time Crowdfunding Issuers <u>raising less than</u> \$1,235,000 can file with two years of reviewed financial statements (or with financial statements from inception if the company was organized less than two years before the date of the Crowdfunding Offering).</p> <p>First-time Crowdfunding Issuers <u>raising more than</u> \$1,235,000 must include two years of audited financials (or with financial statements from inception if the company was organized less than two years prior to the date of the Crowdfunding Offering).</p> <p>First-time Crowdfunding Issuers <u>raising less than</u> \$124,000 need only include the amount of total income, taxable income, and total tax, or the equivalent line items, as reported on the federal income tax returns filed by the issuer. Additionally, the principal executive officer of the company must certify these amounts as being true and complete in all material respects.</p>
<p><b>Financial Statement Requirements for Repeat Crowdfunding Issuers</b></p>	<p>Repeat Crowdfunding Issuers <u>raising less than</u> \$618,000 can file with two years of reviewed financial statements (or with financial statements from inception if the company was organized less than two years before the date of the Crowdfunding Offering).</p> <p>Repeat Crowdfunding Issuers <u>raising more than</u> \$618,000 must file two years of audited financial statements (or with financial statements from inception if the company was organized less than two years before the date of the repeat Crowdfunding Offering).</p> <p>Regulation Crowdfunding does not require interim financial statements (reviewed or audited). However, it is advisable to include interim financial statements to the extent that they are or would be materially different from the issuer’s annual financial statements.</p>
<p><b>Ongoing Reporting Requirements</b></p>	<p><b>Amendments to the Offering Statement on Form C/A:</b></p> <p>A Crowdfunding Issuer can amend its Form C to disclose material changes, additions, or updates to information therein. If an amendment is made for material changes, the company must reconfirm outstanding investment commitments within five business days, or the investor’s commitment will be considered canceled.</p> <p><b>Progress Updates on Form C-U:</b></p> <p>A Crowdfunding Issuer must provide an update on its progress toward meeting the target offering amount within five (5) business days after reaching 50% and 100% of its target offering amount. If the company accepts proceeds over the target offering amount, it also must file a final Form C-U reflecting the total amount of securities sold in the Crowdfunding Offering.</p> <p>If the Intermediary provides frequent updates on the Crowdfunding Offering and its progress via its online platform, then the company will only need to file a final Form C-U to disclose the total amount of securities sold in the offering upon its completion.</p> <p><b>Annual Reports on Form C-AR:</b></p> <p>A Crowdfunding Issuer that sold securities in a Crowdfunding Offering is required to provide and file with the SEC an Annual Report on Form C-AR no later than 120 days after the end of its fiscal year.</p> <p>The Annual Report requires information similar to what is required in the Offering Statement. While neither an audit nor a review of the financial statements is required in the Annual Report, it is customary to include the financials for the fiscal year covered by the Annual Report.</p>



<p><b>Advertisements and Pre-Filing Communications</b></p>	<p>Before filing its Offering Statement, a Crowdfunding Issuer can communicate with potential investors to see if they may be interested in your planned Crowdfunding Offering, if those communications state that:</p> <ol style="list-style-type: none"> <li>(1) the company is not soliciting any money or other consideration and will not accept any consideration it receives;</li> <li>(2) the company will not accept any portion of an offer to buy its securities and cannot accept any portion of a purchase price except through the Intermediary after the Offering Statement is filed with the SEC; and</li> <li>(3) indications of interest do not constitute an obligation or commitment.</li> </ol> <p>After filing the Offering Statement, a Crowdfunding Issuer can only promulgate two types of communications:</p> <ol style="list-style-type: none"> <li>(1) communications that do not mention the terms of the offering (price, nature of securities, amount being offered, closing date, use of proceeds, and progress towards funding goal); and</li> <li>(2) Tombstone communications containing some or all of the certain hard factual statements specified in the rules, and the address of the company's platform.</li> </ol> <p>Crowdfunding Issuers can compensate persons to promote its offering through channels provided by the Intermediary, but only if such promotions comply with the requirements as to notices and solicitations of interest under Regulation Crowdfunding.</p>
<p><b>Resale Restrictions</b></p>	<p>Securities purchased in a Crowdfunding Offering cannot be resold for a period of one year unless such sale is to:</p> <ol style="list-style-type: none"> <li>(1) the issuer of the securities;</li> <li>(2) an Accredited Investor;</li> <li>(3) to a member of the family of the purchaser or the equivalent, to a trust controlled by the purchaser, to a trust created for the benefit of a member of the family of the purchaser or the equivalent, or in connection with the death or divorce of the purchaser or other similar circumstance; or</li> <li>(4) as part of an offering registered with the Commission.</li> </ol>



SECTION 3

# Timeline and Estimated Offering Costs

### SECTION 3: TIMELINE AND ESTIMATED OFFERING COSTS

Bevilacqua PLLC has extensive experience counseling issuers on Crowdfunding Offerings. The time it takes to launch a Crowdfunding Offering from start to finish can vary significantly based on various factors, such as the company's readiness, its financials, the complexity of the offering, the chosen Intermediary's process, and the thoroughness of the marketing and preparation efforts. In the best-case scenario, we find that it typically takes six weeks to launch a Crowdfunding Offering from engagement to filing with the SEC.

However, our timeline assumes that the financial statement review or audit can be completed within that time frame. Each layer of complexity in the business will increase the length of time necessary to it takes to complete the offering.



In terms of cost, a Regulation Crowdfunding campaign can incur costs ranging from \$10,000 to \$150,000+ (and sometimes even more), depending on the size of the raise, the complexity of the business, and the quality and depth of services sought. While it is challenging to provide precise averages due to variations based on company size, needs, and individual circumstances, the table on the following page provides a general estimation of the costs associated with a Crowdfunding Offering.

<b>Accounting Costs</b>	<p>Review of Financial Statements: \$2,500 to \$10,000+</p> <p>Audit (if required): \$10,000 to \$30,000+</p>
<b>Legal Costs</b>	<p>Preparation of Form C and other related documents: \$5,000 to \$35,000+</p>
<b>Commissions to the Intermediary</b>	<p>Typically, 5-7% of the total amount raised in the offering. Some Intermediaries also charge flat fees or a combination of both. The Intermediary may also require an equity fee (e.g., a number of securities of the type being sold in the offering equal to 5-7% of the total securities sold).</p>
<b>Marketing Fees</b>	<p>This varies widely based on the marketing strategy. Basic campaigns can be as low as \$2,000, but comprehensive marketing campaigns (including video production, social media advertising, PR, and more) can range from \$10,000 to \$150,000+.</p>
<b>State Securities Law Filing Fees</b>	<p>Generally, Regulation Crowdfunding preempts state law, so individual state filings are not required. However, some states may have notice-filing requirements and small fees, which are often less than \$200.</p>
<b>Shareholder Services</b>	<p>If an issuer decides to use a service such as a transfer agent or a cap table management service, costs can vary from \$500 to \$5,000+ dollars annually.</p>
<b>Ongoing Reporting Requirements</b>	<p>Preparing and filing annual reports will likely involve both accounting and legal expenses. Depending on the complexity of the business and its financials, these can range from \$3,000 to \$10,000+ annually.</p> <p>Depending on the complexity of the amendment, any necessary amendments to an issuer's offering statement on Form C or any documents filed per Regulation Crowdfunding's continuous reporting requirements can cost from \$1,000 to \$3,000+.</p>
<b>Miscellaneous Costs</b>	<p>This is a broad category, so it can vary significantly. It might include costs like insurance (D&amp;O insurance), technology or platform fees (if not included in Intermediary costs), and other unforeseen expenses. This can range from a few hundred to several thousand dollars.</p>

SECTION 4

# Key Requirements for the Crowdfunding Exemption

## SECTION 4: KEY REQUIREMENTS FOR THE CROWDFUNDING EXEMPTION

Crowdfunding Issuers must ensure that the sale of their securities complies with Section 4(a)(6)'s exemption from the Securities Act's registration Requirements (the "Crowdfunding Exemption"). Offerings that fail to qualify for the exemption will be deemed an unregistered offering of securities under Section 5, and the issuers that perform those offerings may be found liable for any number of securities law violations. As such, it is important that issuers seeking to perform Crowdfunding Offerings retain qualified securities attorneys to help ensure compliance with the rules and requirements of Regulation Crowdfunding.

A securities offering will qualify for the Crowdfunding Exemption from the Securities Act's registration requirements if it satisfies the following four factors:

### 4.1 Factor One: Maximum Offering Amount

Month	Amount Raised	Total Amount Raised
1	\$0.45 M	\$0.45 M
2	\$0.45 M	\$0.90 M
3	\$0.45 M	\$1.35 M
4	\$0.45 M	\$1.80 M
5	\$0.45 M	\$2.25 M
6	\$0.45 M	\$2.70 M
7	\$0.45 M	\$3.15 M
8	\$0.45 M	\$2.60 M
9	\$0.45 M	\$4.00 M
10	\$0.45 M	\$4.50M
11	\$0.45 M	\$4.95 M
12	\$0.50 M	\$5.00 M

The most that any one issuer may sell under Regulation Crowdfunding within any 12-month period, on a rolling basis, is \$5,000,000.00 worth of securities (17 CFR § 227.100(a)(1)). For example, consider an issuer that sells \$450,000 worth of common stock each month for 11 months since beginning a Crowdfunding Offering.

Under such circumstances, as illustrated by the above chart, such an issuer can only sell \$50,000 in the 12<sup>th</sup> month since beginning their Crowdfunding Offering. However, if the same issuer does not sell any securities in the 12<sup>th</sup> month since beginning its Crowdfunding Offering, then it can offer \$500,000 worth of securities in the 13<sup>th</sup> month.

This is because once the 13<sup>th</sup> month starts, the first month of the offering is no longer considered in calculating the maximum offering amount. This concept is illustrated by the following chart:

Month	Amount Raised	Total Amount Raised	Month	Amount Raised	Total Amount Raised
2	\$0.45 M	\$0.45 M	8	\$0.45 M	\$3.15 M
3	\$0.45 M	\$0.90 M	9	\$0.45 M	\$2.60 M
4	\$0.45 M	\$1.35 M	10	\$0.45 M	\$4.00 M
5	\$0.45 M	\$1.80 M	11	\$0.45 M	\$4.50 M
6	\$0.45 M	\$2.25 M	12	\$0.00 M	\$4.50 M
7	\$0.45 M	\$2.70 M	13	\$0.50 M	\$5.00 M

## AFFILIATES AND SUBSIDIARIES:

When determining the aggregate amount of securities sold by an issuer for purposes of the Crowdfunding Exemption, the term “issuer” is deemed to include (i) all entities that are controlled by, or under common control with, the issuer, and (ii) any predecessor of the issuer that performed a Crowdfunding Offering in the 12 preceding months. Additionally, regarding the former, control means the possession, direct or indirect, of the power to manage the policies of an issuer, and refers to subsidiaries, sister companies, and affiliated companies that share a parent somewhere along the upstream corporate chain. The latter refers to situations where an issuer underwent a change of their organizational form (i.e., from a limited liability company (“LLC”) to a corporation) or is the product of a business combination between two companies or was formed because of a spin-off.

## 4.2 Factor Two: Investor Purchasing Limitation

Regulation Crowdfunding differentiates between Accredited Investors and retail investors when determining how much a person can invest.

**(a) Accredited Investor Definition.** The term Accredited Investor is defined under Regulation D Rule 501 (17 CFR § 230.501(a)) and captures various types of entities and individuals, the most important being:

- An organization described in Rule 501(c)(3) of the Internal Revenue Code, a corporation, a Massachusetts or similar business trust, a partnership, or a limited liability company, provided that such entity was not formed for the specific purpose of acquiring the securities offered, and has total assets in excess of \$5,000,000 (17 C.F.R. § 230.501(a)(3)); and
- Any natural person whose individual net worth, or joint net worth with that person's spouse or spousal equivalent, exceeds \$1,000,000 (17 C.F.R. § 230.501(a)(5)).
- Any natural person who had an individual income in excess of \$200,000 in each of the two most recent years (or joint income with that person's spouse or spousal equivalent in excess of \$300,000 in each of those years) and has a reasonable expectation of reaching the same income level in the current year (17 C.F.R. § 230.501(a)(6)).

**NATURAL PERSONS NET WORTH CALCULATION:**

There are a few exceptions to the Accredited Investor qualification for natural persons involving the net worth calculation:

- (1) The value of a primary residence will not be included as an asset for purposes of calculating a person's net worth;
- (2) The indebtedness associated with a person's primary residence (e.g., a mortgage) will not be included as a liability unless the amount of such indebtedness outstanding at the time of sale of securities exceeds the amount outstanding 60 days before such time; and
- (3) Indebtedness that is secured by the person's primary residence in excess of the fair market value of said residence will be counted as a liability (17 C.F.R. § 230.501(a)(5)).

Conceptually, an Accredited Investor is an individual or entity with the capacity to understand, appraise, and bear the risks of investments in exempt offerings. Recognizing this capability, the SEC does not extend to Accredited Investors the protections typically afforded to retail, non-accredited Investors.

**(b) Non-Accredited Investors.** A non-accredited Investor is anyone who does not qualify as an Accredited Investor under Rule 501. In a Crowdfunding Offering, a retail investor is limited to purchasing the following amounts on a rolling 12-month basis:

- If the investor's annual income or net worth is less than \$124,000.00, they can invest up to \$2,500.00, or 5% of their annual net worth or income, whichever is greater (17 CFR § 227.100(a)(2)(i)); or
- If the investor's annual income or net worth (or revenue or net assets for a non-natural person) is more than \$124,000.00, they can invest up to 10% of their annual income or net worth up to \$124,000.00 (17 CFR § 227.100(a)(2)(ii))

**SPECIAL RULES FOR CALCULATION OF ACCREDITED INVESTOR STATUS:**

**Non-Natural Persons:** Instead of calculating investment limits based on annual income and net worth, a non-natural person calculates the limits based on its revenue and net assets (as of its most recent fiscal year-end). See *Regulation Crowdfunding Compliance & Disclosure Interpretations, Question 100.02* for more information.

**Married Individuals:** A non-accredited natural person can include the annual income or net worth of their spouse in determining their purchasing limits under Regulation Crowdfunding. However, the purchasing limitation remains the same as if they had qualified as an individual.

**(c) Foreign Investors.** Regulation Crowdfunding permits foreign persons to invest in Crowdfunding Offerings, but issuers should be careful to ensure that investments by foreigners are not prohibited under the investor's home country law. It is possible to include a representation in the Subscription Agreement to the effect that foreign investors are responsible for ensuring compliance with home-country law; however, this may not protect the issuer from liability in that country.



### 4.3 Factor Three: Intermediary Involvement

Under Regulation Crowdfunding, each Crowdfunding Offering must take place on an Intermediary's platform (17 CFR § 227.100(a)(3)). Further, a Crowdfunding Offering can only be conducted through a single Intermediary. An issuer may terminate an offering on one Intermediary's platform and immediately commence a new offering on a second Intermediary's platform subject to the contractual terms of the issuer's agreement with the first Intermediary.

The term Intermediary is defined under Securities Act Section 4A(a) (15 U.S.C. 77d-1(a)) as an entity that facilitates the purchase and sale of securities under Regulation Crowdfunding. The chief qualifications of an Intermediary are that the entity: (i) is registered with the SEC and is a member of the Financial Industry Regulatory Authority ("FINRA") as a broker or a funding portal; (ii) provides the disclosure required by Regulation Crowdfunding and the SEC; and (iii) ensures that investors are correctly categorized as either Accredited Investors or retail investors.

Issuers can choose between two types of intermediaries according to their needs: brokers and Funding Portals. Most Funding Portals are also Brokers or subsidiaries of Brokers.

#### INTERMEDIARY COMPENSATION:

An Intermediary can only receive a financial interest in a Crowdfunding Issuer if the financial interest is provided as compensation for services and consists of the same securities being sold in the Crowdfunding Offering in which the entity is acting as Intermediary (see Frequently Asked Questions Regarding Regulation Crowdfunding and Intermediary Requirements, Question 300.1 for more information).

**(a) Funding Portal.** A "Funding Portal" is an online marketplace that connects issuers with investors. The initial and ongoing regulatory cost to register and operate a Funding Portal is lower than that of a Broker-Dealer. A Funding Portal cannot offer investment advice or recommendations or solicit purchases, sales, or offers to buy the securities displayed on its platform (15 U.S.C. § 78c(a)(80)). Thus, the success of a Crowdfunding Offering on a Funding Portal depends, in part, on the popularity of the Funding Portal itself and its ability to draw in potential investors.

**(b) Broker.** A "Broker" is a person or entity that is engaged in the business of buying and or selling securities for the account of others (15 U.S.C. § 78c(a)(4)). In a Regulation Crowdfunding Offering, a Broker acting as an Intermediary provides facilitation services for the issuer. Brokers that engage in Reg CF offerings will have their own platform or portal for the offer and sale of securities in a Reg CF offering.

See Regulation Crowdfunding: A Small Entity Compliance Guide for Crowdfunding Intermediaries for more information.

#### WHITE LABEL OFFERING PLATFORMS:

Some Intermediaries will contract with an issuer to create a personalized and customizable Crowdfunding offering platform, which is referred to as a "White Label" offering platform.

## 4.4 Factor Four: Issuer Eligibility

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The final requirement focuses on the organizational form and status of the issuer and sets forth the types of issuers that cannot utilize the Crowdfunding Exemption or Regulation Crowdfunding (17 C.F.R. § 227.100(b)). The following is a list of those prohibited issuers:

- (1) Foreign issuers, but not the U.S. subsidiary of a foreign company;
- (2) An issuer that is currently subject to the annual and quarterly reporting requirements under Exchange Act Section 13 (i.e., a company that has performed a registered primary offering of securities that are listed on a national exchange) or 15(d) (i.e., a company that has conducted a registered primary offering that does not have securities listed on a national exchange) (15 U.S.C. 78m or 78o(d));
- (3) An investment company under Section 3 of the Investment Company Act of 1940 or an entity that is exempt from the definition of an investment company under Section 3(b) or 3(c) thereof (15 U.S.C. § 80a-3);
- (4) An issuer that is considered a bad actor under Regulation Crowdfunding (17 C.F.R. § 227.503);
- (5) An issuer that is delinquent in its annual reporting requirements under Regulation Crowdfunding for the past two years;
- (6) An issuer with no specific business plan or whose plan is to engage in a merger or acquisition with an unidentified company or companies (i.e., a special acquisition company or a blank check company) (17 C.F.R. § 227.100(b)).

After deciding to comply with the Crowdfunding Exemption's requirements, an issuer can start preparing its Offering Statement and Form C, which are the principal Regulation Crowdfunding disclosure documents which it will file with the SEC.

SECTION 5

# The Offering Statement on Form C

## SECTION 5: THE OFFERING STATEMENT ON FORM C

Crowdfunding Offerings begin (and end, as a matter of course) with the filing of a Form C. Form C includes a set of instructions that discusses the disclosures necessary to perform a Crowdfunding Offering. This form contains instructions detailing the required disclosures for conducting a Crowdfunding Offering. The Regulation Crowdfunding disclosure document consists of two primary parts: (1) Form C, a template requesting basic information about the issuer, and (2) the Offering Statement, a comprehensive document containing the issuer's disclosures mandated by Regulation Crowdfunding.

Although the Offering Statement is less detailed than a registration statement for an initial public offering, it still demands disclosure on a broad array of topics considered crucial for investors. Its goal is to assist investors in evaluating the value and risk related to purchasing securities of the issuer.

### MATERIALITY:

Materiality refers to the significance or importance of a piece of information. Under federal securities law, the term "Material" refers to information that a reasonably prudent investor would deem important to know before deciding to buy or sell a security.



## 5.1 Form C

The Form C, published online by the SEC, is a guide to complying with Regulation Crowdfunding. For example, Part III of Form C contains a section titled “Optional Question & Answer Format for an Offering Statement,” which sets forth a series of 31 questions that, if answered correctly in conjunction with a proper review of the provisions of Regulation Crowdfunding, will ensure compliance with the Crowdfunding Exemption.

In practice, the Form C filing, as designated on the SEC’s EDGAR filing system, is the first page and a half of fill-in-the-blank items of the version published by the SEC in HTML format and displays:

- (1) information about the issuer, such as its name, address, organizational form, state of formation, and number of employees;
- (2) information about the Intermediary, including its name, registration information, the dollar amount of compensation to be paid to the Intermediary, and whether the Intermediary holds or will acquire an interest in the issuer as a result of their agreement;
- (3) information about the primary offering, such as the type of securities being offered, the amount thereof, the price per share and the target offering amount in dollars, and the jurisdictions in which the securities will be sold; and
- (4) financial statement information.

## 5.2 The Offering Statement

Regulation Crowdfunding Subpart B ([17 CFR Part 227 Subpart B](#)) contains the rules and regulations pertaining to the information that must be disclosed in a Crowdfunding Offering Statement. Various sources published by the SEC, such as the Division of Corporation Finance’s Compliance and Disclosure Interpretations, also provide guidance on the crowdfunding exemption.

### DUPLICATIVE DISCLOSURES:

Regulation Crowdfunding contains an instruction stating that it is unnecessary to make the same disclosure more than once, and instead, issuers may include a cross-reference.

**(a) Identifying Information.** Rule 201(a) ([17 C.F.R. § 227.201\(a\)](#)), which corresponds to questions 1, 2, and 3 on Form C, requires disclosure of issuer information that is already disclosed on the Form C mentioned above. In practice, this requirement is satisfied by including the prior information in the Offering Statement in non-html format.

### ORGANIZATIONAL FORM OF THE BUSINESS:

Regulation Crowdfunding does not prohibit issuers from utilizing the Crowdfunding Exemption based on their organizational form (i.e., corporations, LLCs, etc.). However, Crowdfunding Issuers tend to organize as corporations or limited liability companies due to the customizability of these organizational forms.

**(b) Directors and Officers of the Company** Rule 201(b) (17 C.F.R. § 227.201(b)), which corresponds to questions 4 and 5 on Form C, requires the disclosure of information about the issuer’s directors and officers, which may include a president, vice president, secretary, treasurer or principal financial officer, comptroller or principal accounting officer, or any person performing a similar function. It also requires the following information for each position held by the director or officer for the past three years:

Employer:

Employer’s Principal Business:

Title:

Dates of Service:

Responsibilities:

#### EXTERNALLY MANAGED LIMITED LIABILITY COMPANIES:

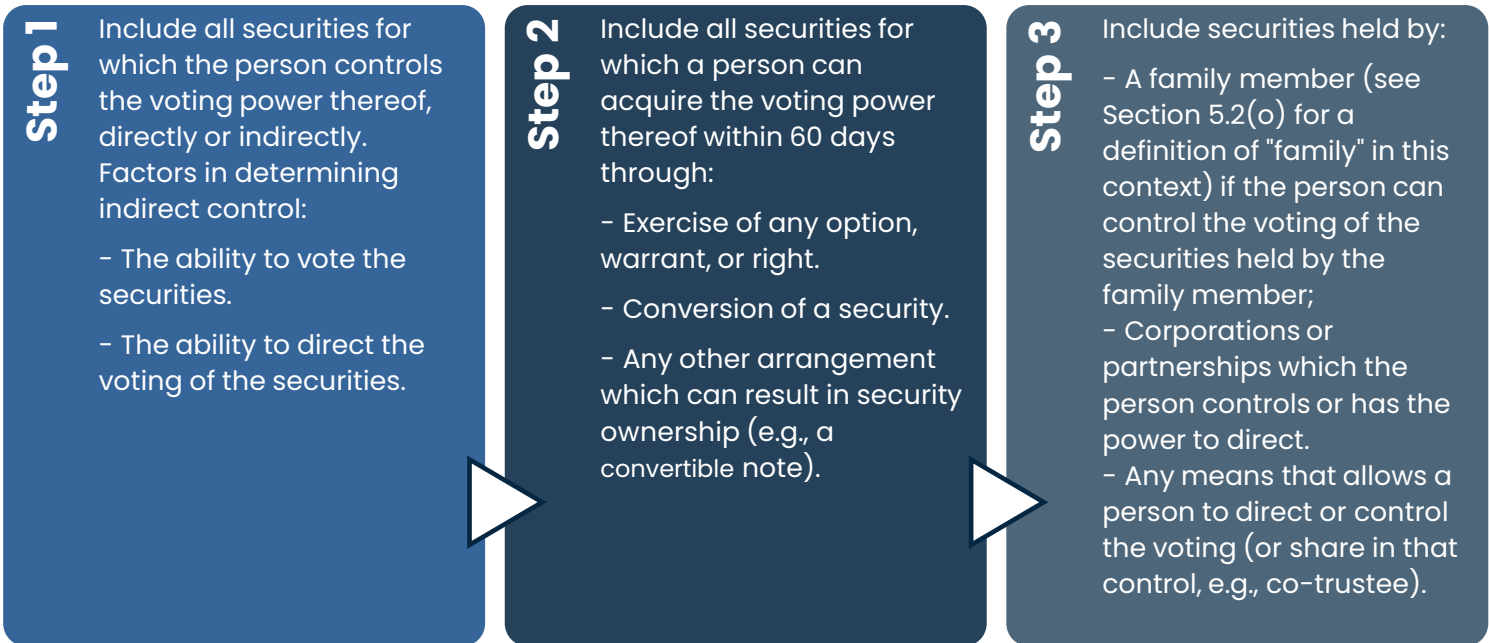
For limited liability company issuers that are managed by an external entity and lack any formal directors and officers of their own, the issuer should instead state that fact and disclose the directors and officers of said manager entity. If the manager-entity of the issuer lacks directors and officers as well, then the issuer should disclose that as well. In both cases, the issuer should also include a discussion of the manager and its qualifications in the business section of the Offering Statement, discussed below.

This section also typically includes a biography for each named director and officer.

#### DIRECTOR OR OFFICER BIOGRAPHY EXAMPLE:

Johnathan Doe has served as our Chief Executive Officer and a member of our board of directors since January 2022. Mr. Doe has served as the President of XYZ Company Limited, a non-bank financial institution, since its founding in January 2020. From January 2017 to December 2019, Mr. Doe was a partner at GHI, LLP, which provides privacy advisory services to privately held businesses. Mr. Doe is the author of numerous essays on privacy issues, including a history of the evolution of privacy regulations in the digital age, as well as two books on U.S. privacy laws. Mr. Doe has been a member of the board of directors for NOP Industries, Inc. (Nasdaq: NOPI) since December 2021, in addition to serving as chairman of the board of directors of DEF Co. since January 2021. Mr. Doe is a Certified Public Accountant and has developed significant knowledge of U.S. GAAP and IFRS accounting standards. Mr. Doe received his bachelor’s degree in economics from X University and his master’s degree in business administration from University of Y.

**(c) Principal Security Holders.** Rule 201(c) (17 C.F.R. § 227.201(c)), which corresponds to question 6 on Form C requires the disclosure of all beneficial owners of the issuer’s voting securities being sold in the Crowdfunding Offering as of a date no later than 120 days prior to the commencement thereof. To calculate the total voting power owned by an equity owner of the issuer, the following rules apply:



**FULLY DILUTED BASIS:**

In calculating total voting power, assume the exercise of all options, warrants, or rights and the conversion of any convertible securities or agreements which result in security ownership.

If an equity holder does not directly own securities included in the total voting power calculation, we consider these as 'beneficially owned' by them. The equity holder should provide an explanation for such situations in a footnote under the Principal Security Holders table, as follows:

**EXAMPLE BENEFICIAL OWNERSHIP TABLE AND CORRESPONDING FOOTNOTES:**

Name of Holder	Number of Common Stock Owned	Percentage of Voting Power
John Hancock	10,000 <sup>(1)</sup>	50%
John Doe	5,000 <sup>(2)</sup>	25%
Jane Smith	5,000 <sup>(3)</sup>	25%

- (1) John Hancock personally owns 8,000 shares of Common Stock and has been awarded the option to purchase 2,000 shares of Common Stock, which will vest in four (4) equal quarterly installments commencing in the quarter following the commencement of this offering.
- (2) John Doe is deemed to beneficially own the 5,000 shares of Common Stock owned by Greenrock LLC, a Delaware limited liability company, 100% owned by the Roth individual retirement account of Mr. Doe. Mr. Doe is deemed to beneficially own the 5,000 shares of Common Stock held by Greenrock LLC because he has sole voting and dispositive powers over the company as its manager. Greenrock LLC’s business address is 123 Easy Street, Alexandria, VA 22310.
- (3) Jane Smith personally owns 4,000 shares of Common Stock and is deemed to beneficially own: (i) 500 shares of Common Stock held by John Smith, her husband, and (ii) 500 shares of Common Stock held by their minor child, William Smith.

**(d) Business Section.** Rule 201(d) (17 C.F.R. 227.201(d)), which corresponds to questions 1 and 9 on Form C, requires a description of the issuer's business but does not offer any guidance on this requirement, while Form C instructs issuers to describe in detail their current or anticipated business. In this section of the Offering Statement, the issuer should craft a detailed, long-form business summary tailored to their specific circumstances. Since each issuer's business section will differ, the following list includes subsections that can be considered necessary for a complete description of the business, if applicable.

#### PUFFERY:

When drafting the business section, issuers will need to walk the delicate line between business puffery and making prohibited statements if they want to avoid liability for securities fraud. The main tool for enforcing the federal securities laws is found under Exchange Act Section 10(b) and Rule 10b-5 (15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5). Section 10(b) and Rule 10b-5 make it unlawful for any issuer to make a material misstatement or omission in connection with the purchase or sale of a security. Thus, when drafting the business section (or the Offering Statement in general), it is crucial to ensure that any unsupported claim or statement can be considered puffery. To illustrate, courts have stated that the term puffery encompasses:

[S]tatements that are too general to cause a reasonable investor to rely upon them, and thus cannot have misled a reasonable investor. They are statements that lack the sort of definite positive projections that might require later correction. Here, the terms "high quality" and "premium" are clear examples of puffery because they are general and not subject to verification. At most, "high quality" and "premium" are statements of opinion, which are also not actionable. To be actionable, the opinion statements must be (i) false and (ii) not honestly believed when made. *Matter of Sundial Growers Inc. Sec. Litig.*, 2020 NY Slip Op. 50579(U).

**(I) DESCRIPTION OF THE BUSINESS.** A general overview of the issuer and the nature of its business operations in a few paragraphs, including a description of the business done and intended to be done by the issuer and its subsidiaries and the general development of the business.

**(II) CORPORATE HISTORY.** A discussion of: (1) the legal and commercial name, date of incorporation, state or country of incorporation, and the address and telephone number of the issuer's registered office; (2) important events in the development of the issuer's business, such as past financings, and any relevant acquisitions, mergers, agreements, joint ventures, etc.; and (3) information regarding the issuer's subsidiaries and the ownership interest that the Company has in each of its subsidiaries.

**(III) ORGANIZATIONAL STRUCTURE.** A comprehensive organizational chart illustrating: (1) the percentage ownership of each subsidiary, if any; (2) the percentage ownership of any direct parent company and any relevant indirect parent company, if any; and (3) the place of incorporation of each.

**(IV) INDUSTRY AND MARKET OPPORTUNITIES.** A general overview of the industry in which the issuer operates, including relevant positive trends with quantitative data and qualitative statements to support those trends, each with corresponding citations. Also tends to include statements regarding the issuer's ability and plans to capture market share.

**(V) PRODUCTS AND SERVICES.** An overview of the primary products and/or services the issuer offers. This section will detail the features, benefits, applications, and unique selling points of the issuer's offerings. Typically, there will be a separate paragraph detailing each service or product offering.



**(VI) CUSTOMERS.** A breakdown of the issuer's target market or demographic. This often includes information on key customer segments, major contracts or clients, customer retention rates, and any dependency on specific customers.

**(VII) SALES AND MARKETING.** A description of how the issuer promotes and sells its products or services. This might include details on sales channels, marketing strategies, advertising efforts, and the structure of the sales team.

**(VIII) BUSINESS STRENGTHS.** A highlight of the issuer's unique strengths or advantages in the market. This can encompass proprietary technology, experienced management, strategic partnerships, or other factors that give the issuer a competitive edge.

**(IX) GROWTH STRATEGIES.** A description of how the issuer intends to drive growth, including a description of any franchising programs, plans to enter new markets or launch new products, acquisition strategies, research and development efforts, and scaling of current operations. Typically, this will be presented in a bullet point list with a paragraph detailing each strategy.

**(X) COMPETITION.** An assessment of the competitive landscape of the issuer's industry. This section identifies key competitors, analyzes the issuer's position relative to these competitors, and discusses the primary competitive threats and challenges.

**(XI) SOURCING AND SUPPLIES.** A discussion about where and how the issuer obtains the materials or services essential for its operations. This discussion could cover relationships and agreements with suppliers.

**(XII) SEASONALITY.** A discussion of whether the issuer's business follows any seasonal trends. For example, a restaurant in a college town will have its highest revenue during the school year.

**(XIII) INTELLECTUAL PROPERTY.** A description of any intellectual property, such as trademarks, service marks, copyrights, or patents, which the issuer owns, licenses, or has applied for, including a list of these rights, a description thereof, and any relevant registration numbers.

**(XIV) FACILITIES.** State briefly the location and general character of any principal offices or other material physical properties of the issuer and its subsidiaries. Disclose if any of the issuer's properties are leases or subject to a mortgage or similar encumbrance. Include information regarding the suitability, adequacy, productive capacity, and extent of utilization of the properties and facilities used in the issuer's business.

**(XV) LEGAL PROCEEDINGS.** A description of any legal proceedings or claims that involve the issuer that the issuer believes will have a material adverse effect on its business, financial condition, or operating results.

**(XVI) CLIMATE CHANGE AND SUSTAINABILITY.** An examination of how climate change and sustainability concerns impact the issuer's operations and strategy. This might include details on the issuer's carbon footprint, sustainability goals, and any initiatives or practices aimed at environmental responsibility.

**(XVII) GOVERNMENT AND ENVIRONMENTAL REGULATIONS.** A description of any governmental and environmental regulations the issuer must follow, such as health and safety, consumer protection, privacy, solicitation, franchise, or licensing laws or regulations.

**(e) Human Capital.** Rule 201(e) (17 C.F.R. § 227.201(e)) requires issuers to disclose the number of employees they have. This disclosure is customarily included as a subsection of the Business Section and discusses whether the employees are full-time or part-time and whether there are any independent contractors.

**(f) Risk Factors.** Rule 201(f) (17 C.F.R. § 227.201(f)), which corresponds to question 8 on Form C, requires issuers to disclose the material factors that make an investment in their securities speculative or risky. Form C instructs issuers to avoid generalized statements and include only those factors that are unique to the issuer, stating that discussion should be tailored to the issuer's business and the offering and should not repeat the factors addressed in the mandatory legends. It finishes by stating that there is no specific number of risk factors issuers must identify.

**(i) MANDATORY LEGENDS.** The first requirement in the risk factor section is the inclusion of certain mandatory legends immediately following the section title:

**A crowdfunding investment involves risk. You should not invest any funds in this offering unless you can afford to lose your entire investment.**

**In making an investment decision, investors must rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved. These securities have not been recommended or approved by any federal or state securities commission or regulatory authority. Furthermore, these authorities have not passed upon the accuracy or adequacy of this document.**

**The U.S. Securities and Exchange Commission does not pass upon the merits of any securities offered or the terms of the offering, nor does it pass upon the accuracy or completeness of any offering document or literature.**

**These securities are offered under an exemption from registration; however, the U.S. Securities and Exchange Commission has not made an independent determination that these securities are exempt from registration.**

#### RECOMMENDED OPTIONAL DISCLAIMER:

In addition to the mandatory legends, which must appear immediately following the risk factor section heading, the following language is favored as an optional disclaimer:

***An investment in the Company involves a high degree of risk.*** You should carefully consider the risks described below and throughout this Offering Statement before deciding to purchase any Shares in this Offering. If any of these risks actually occur, our business, financial condition, or results of operations may suffer. As a result, you could lose part or all of your investment

There are several different types of risk factors that you will find in an Offering Statement (or any securities law disclosure document, for that matter). Generally, most risk factors will fall under one of the following headings: (i) risks related to the issuer's business and industry; (ii) risks related to government regulation as applied to the issuer; and (iii) risks related to the offering at hand and the issuer's securities.

## REGULATION CROWDFUNDING RISK FACTOR FORMATS:

Issuers have the option to format their risk factor section in two ways: (i) a bullet point list of risk factors with a minimal explanation other than a clear statement of each risk at hand; or (ii) a list of risk factor captions that set forth a short statement of the risk factor at hand, followed by a concise explanation of how the risk affects the issuer or the securities being offered. For example:

### **RISKS RELATED TO OUR BUSINESS**

- Our business plan is largely untested, and the Manager has limited experience executing our business plan, as well as with real estate financing and acquisitions. If we are unable to execute our business plan, we will not be able to generate any revenue, and our results of operations would be adversely affected.
- We have a limited operating history and may not be able to operate our business successfully or generate sufficient cash flows to make or sustain distributions to our stockholders.

Or:

***We may require additional capital to support business growth, and this capital might not be available on acceptable terms, if at all.***

We intend to continue making investments to support our business growth and may require additional funds to respond to business challenges, including the need to develop new products, or services, or enhance our existing products or services, enhance our operating infrastructure, and acquire complementary businesses and technologies. To achieve these objectives, we may make future commitments of capital resources. Accordingly, we may need to engage in equity or debt financing to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our existing equity holders could suffer significant dilution, and any new equity securities we issue could have rights, preferences, and privileges superior to those of holders of our common equity. Any future debt financing secured by us could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited.

**(II) RISKS RELATED TO THE ISSUER'S BUSINESS.** This subsection outlines the inherent risks associated with the issuer's operations, industry dynamics, and internal factors. These risks provide insights into challenges, uncertainties, or potential setbacks that the company might encounter, which could impact its ability to achieve its objectives, maintain profitability, or sustain growth. The aim of this section is to ensure transparency and to provide potential investors with a holistic view of business-specific challenges the issuer might face. Common risk factors under this category may include, but are not limited to:

- (1) **Operational Risks** : Issues arising from the issuer's day-to-day operations, such as supply chain disruptions, manufacturing challenges, or reliance on a limited number of suppliers.
- (2) **Industry-Specific Risks**: Challenges stemming from industry dynamics, including rapid technological changes, evolving regulatory environments, and competitive pressures.
- (3) **Competitive Landscape**: Risks associated with increased competition, potential entry of new competitors, or competitors having superior resources.
- (4) **Regulatory and Compliance Risks**: Concerns related to the regulatory environment the issuer operates in, including potential changes in regulations, compliance costs, and the risk of non-compliance penalties.
- (5) **Technological Risks**: The potential for technological obsolescence, reliance on certain technologies, or challenges in adopting new technologies.
- (6) **Customer Dependence: Reliance** on a limited number of key customers or clients, which could impact revenue if business relationships change.
- (7) **Intellectual Property Risks**: Concerns about protecting proprietary technologies, potential infringement claims, or the inability to secure necessary intellectual property rights.
- (8) **Human Resource Risks**: Issues related to retaining key personnel, talent acquisition challenges, or potential labor disputes.
- (9) **Internal Control and Systems Risks**: The potential for failures in internal processes or systems, which could result in operational disruptions or financial inaccuracies.
- (10) **Geographical Concentration**: Risks arising from operating in specific geographic regions, including political, economic, or environmental concerns.

**(III) RISKS RELATED TO GOVERNMENT REGULATION.** This subsection addresses the potential challenges and uncertainties stemming from the regulatory environment in which the company operates. These risks highlight the impact of current and potential future government regulations, oversight, and compliance requirements on the company's business activities, financial health, and operational strategies. The goal of this section is to ensure that potential investors are aware of the regulatory challenges and obligations that could influence the issuer's decision-making, financial performance, and overall sustainability. Common risk factors under this category may include, but are not limited to:

- (1) **Changing Regulatory Landscape:** The potential for sudden changes in regulations or legal frameworks that could adversely affect the company's operations or profitability.
- (2) **Compliance Costs:** The financial and operational burdens of complying with various regulations, which might increase due to new laws or stricter enforcement.
- (3) **Permitting and Licensing Risks:** Difficulties or delays in obtaining, maintaining, or renewing necessary permits or licenses for operations.
- (4) **Environmental Regulations:** Risks associated with environmental laws, including potential liabilities, remediation costs, or restrictions on certain business activities.
- (5) **Health and Safety Standards:** Challenges or costs related to meeting industry-specific health and safety regulations.
- (6) **Trade Restrictions:** The potential impact of tariffs, trade barriers, or sanctions on the company's international business activities.
- (7) **Data Protection and Privacy Laws:** Compliance challenges or potential liabilities arising from data protection and privacy regulations.
- (8) **Antitrust and Competition Laws:** Risks associated with antitrust investigations or allegations of anti-competitive behaviors.
- (9) **Tax Regulations:** Uncertainties or vulnerabilities due to changing tax laws, policies, or disputes with tax authorities.
- (10) **Political and Legislative Uncertainty:** Risks arising from political shifts that could lead to regulatory changes or instability in the company's primary markets.

**(IV) RISKS RELATED TO THE OFFERING AND THE ISSUER'S SECURITIES.** This subsection discusses the potential risks and uncertainties associated with the specific offering at hand. These risks will provide insight into the potential challenges, limitations, or implications of investing in the company's securities on the basis thereof, highlighting potential impacts on investor returns, liquidity, ownership, and overall investment value. The intention of this subsection is to ensure potential investors have a clear picture of the inherent risks associated with the Crowdfunding Offering and the securities being offered thereby, enabling them to make well-informed investment choices. Common risk factors under this category may include, but are not limited to:

- (1) **Liquidity Concerns:** Potential difficulties in selling or trading the securities, especially if they are not listed on a major exchange or if there is limited trading volume.
- (2) **Price Volatility:** The possibility of significant fluctuations in the price of the securities due to market dynamics, company performance, or broader economic factors.
- (3) **Dilution Risks:** The chance that the issuance of additional securities in the future could dilute the value of shares held by current investors.
- (4) **Dividend Policies:** Uncertainties or limitations related to the distribution of dividends, including the possibility that dividends might not be paid.
- (5) **Lack of Control:** For non-voting securities, the risk is that investors may have limited influence over company decisions or directions.
- (6) **Priority in Liquidation:** In the event of company liquidation, certain securities might be prioritized lower in receiving assets, affecting potential returns for investors.
- (7) **Interest Rate Sensitivity:** For debt securities, potential vulnerabilities to fluctuations in interest rates might impact the value or returns of the securities.
- (8) **Convertible Securities Risks:** Challenges or implications related to securities that can be converted into another form, such as shares, which might affect their value or the overall share structure.
- (9) **Potential Conflicts of Interest:** Situations where company leadership or major shareholders may have interests that could diverge from or conflict with those of general investors.
- (10) **Regulatory and Compliance Risks:** The possibility that changes in securities regulations or compliance requirements might impact the trading, value, or attractiveness of the securities.

**(g) Target Offering Amount and Deadline.** Rule 201(g) (17 C.F.R. § 227.201(g)), which corresponds to questions 10 and 13 on Form C, requires disclosure of the deadline for reaching the target offering amount. There are several places where this information may be disclosed throughout the Offering Statement. Issuers must also include a statement that, if the Company fails to reach the target offering amount by the offering deadline, any investment commitment will be canceled automatically, and the Intermediary will direct refunds of each canceled investment to the investor within five business days (see [Section 5.4](#) for more information).

**TARGET OFFERING DEADLINE V. MAXIMUM OFFERING DEADLINE:**

Regulation Crowdfunding sets a deadline for reaching the target offering amount but does not impose one for achieving the maximum offering amount. After meeting the target amount, an issuer can continue to offer securities under the Offering Statement indefinitely if they adhere to the rolling 12-month limit of \$5,000,000.

**(h) Oversubscriptions.** Rule 201(h) (17 C.F.R. § 227.201(h)), which corresponds to questions 10 and 13 on Form C, requires disclosure about any intent of the issuer to accept investments in excess of the target offering amount, and if so, the maximum amount of oversubscriptions it will accept and how those subscriptions will be allocated, such as on a pro-rata or a first-come-first-serve basis. Issuers tend to accept oversubscriptions up to the maximum offering amount under Regulation Crowdfunding during any 12-month limit. The disclosure requested by Rule 201(h) is usually satisfied by including a footnote to the Use of Proceeds table.

**Use of Proceeds.** Rule 201(i) (17 C.F.R. § 227.201(i)), which corresponds to questions 9 and 10 on Form C, mandates that issuers disclose the purpose and intended use of the proceeds from the Crowdfunding Offering. The instructions to question 10 state that an issuer that will accept oversubscriptions must describe the purpose, allocation method, and intended use of such oversubscriptions. In practice, issuers will satisfy this disclosure requirement via the information included in the footnotes to the Use of Proceeds table. An example of that table is as follows on the next page.

**EXAMPLE USE OF PROCEEDS TABLE:**

	If Target Offering Amount is Sold	If Maximum Amount is Sold (1)(2)
<b>Total Proceeds</b>	\$100,000	\$1,000,000
<b>Less: Offering Expenses</b>		
(A) Intermediary Transaction Fee (4%)	\$4,000	\$40,000
(B) Intermediary Due Diligence Fee	\$16,000	\$16,000
(C) Legal expenses	\$20,000	\$20,000
(D) Accounting expenses	\$10,000	\$10,000
<b>Net Proceeds</b>	\$50,000	\$914,000
<b>Use of Net Proceeds</b>		
(A) Advertising and Marketing	\$10,000	\$10,000
(B) Working Capital	\$0 <sup>(3)</sup>	\$400,000
(C) Building Expenses	\$40,000	\$514,000
<b>Total Use of Net Proceeds</b>	\$50,000	\$914,000



**FOOTNOTES TO THE USE OF PROCEEDS TABLE:**

The Use of Proceeds table customarily includes certain other disclosures in its accompanying footnotes. These footnotes provide additional information necessary to an understanding of the table. For example, since the table includes projections which the issuer is not required to achieve, the following footnote is included which acts as a cross reference to the risk factors section and a disclaimer of the projections in the Use of Proceed table:

- (1) The above figures represent only estimated costs. This expected use of net proceeds from this Offering represents our intentions based upon our current plans and business conditions. The amounts and timing of our actual expenditures may vary significantly depending on numerous factors, including the status of and results from operations. As a result, our management will retain broad discretion over the allocation of the net proceeds from this Offering. We may find it necessary or advisable to use the net proceeds from this Offering for other purposes, and we will have broad discretion in the application of net proceeds from this Offering. Furthermore, we anticipate that we will need to secure additional funding for the full implementation of our business plan. Please see the section entitled "Risk Factors."

Additionally, The disclosure requested by Rule 201(h) with respect to oversubscriptions is usually satisfied by including a footnote to the Use of Proceeds table.

- (2) We will accept proceeds in excess of the target Offering amount of \$100,000. We will allocate oversubscriptions in the manner determined by our Manager. We will use the oversubscribed amount up to \$5,000,000 in the manner described in the above table.

**(j) Offering Completion, Early Closings, and Cancellation Process.** Rule 201(j) (17 C.F.R. § 227.201(j)), which corresponds to question 13 on Form C, requires issuers to detail the process for finalizing investor commitments and the method by which an investor can cancel their commitment. To comply with this, Regulation Crowdfunding instructs issuers to include the following specific language in their Offering Statement:

- Investors may cancel an investment commitment at any time up to the cancellation deadline, which occurs 48 hours prior to the Offering deadline identified in these Offering materials;
- The Intermediary will notify investors when the target offering amount is met;
- If an issuer reaches the target offering amount prior to the deadline identified in its offering materials, it may close the offering early (according to 17 CFR 227.304(b)) if it provides notice about the new offering deadline at least five business days prior to such new offering deadline (absent a material change that would require an extension of the offering and reconfirmation of the investment commitment according to Section 5.1 (k)); and
- If an investor does not cancel an investment commitment before the 48-hour period prior to the offering deadline, the funds will be released to the issuer upon closing of the offering, and the investor will receive securities in exchange for his or her investment;



**EARLY CLOSINGS:**

Issuers who wish to conduct an early closing will need to comply with the ongoing reporting requirements of Regulation Crowdfunding (see Section 5.5 Early Closing for more information).

**(k) Reconfirmation of Investment Commitments.** Rule 201(k) (17 C.F.R. § 227.201(k)), which corresponds to question 13 on Form C, requires issuers to disclose that investors must reconfirm their investment commitment after there is a material change to the issuer, its business, or the offering, and that failure to do so by the investor will result in cancellation of their commitment and a return of funds (see Section 5.4 for more information).

**(l) Terms of the Offering; Capital Structure.** Rules 201(m)(1) – (6) (17 C.F.R. § 227.201(m)(1) – (6)), which correspond to questions 13 – 23 on Form C, require a description of the terms of the securities being offered, including information about the target offering amount in number of securities and dollar amount, and the maximum offering amount in number of securities and dollar amount.

Issuers are also required to disclose any distribution rights, voting rights and limitations thereon, transfer rights or restrictions, information rights, anti-dilution or anti-takeover rights, and any drag-along or tag-along rights, or any other material rights associated with the securities being offered, and whether or how the rights of the securities being offered may be modified. Further, these subsections also require a description of the material terms of any other classes of securities which the issuer is authorized to issue and:

- The value of the securities and the method for determining their valuation;
- Whether the other classes of securities or the exercise of rights of the principal securities holders could materially affect the purchasers of the securities being offered; and
- Risks of being a minority equity holder in the company.

**COMMON RIGHTS RESTRICTIONS:**

Crowdfunding Issuers, especially those whose success hinges on their founders' ongoing involvement, often limit information rights and voting rights and require their consent to any securities transfers. This strategy aims to keep control of the company with the founders or other key individuals.

**(i) BONUS UNITS AND INVESTMENT INCENTIVES.** It is common for Crowdfunding Issuers to offer bonus shares or tangible property as an investment incentive. To include an incentive structure in their Crowdfunding Offering, issuers only need to disclose how they plan to offer these incentives. This gives issuers significant flexibility to tailor the incentive structure to their business needs.

**INCENTIVE STRUCTURE EXAMPLES:**

Issuers can provide bonus shares based on the size of an investor's commitment. For instance, an investor buying 100 shares of common stock might get 50 bonus shares. They can set up as many tiers as they want for this. Alternatively, issuers can offer bonus shares based on the timing of an investor's commitment relative to the total commitments. For example, investors who commit before the first 10,000 common stock shares are sold could receive one bonus share for every five purchased, with as many different tiers as desired.

Issuers can also devise incentive structures with non-equity rewards. For instance, they might offer a free T-shirt to anyone buying at least 100 shares of Common Stock, with more valuable rewards at higher tiers. The primary constraint is the issuer's ability to fulfill these commitments, as failing to do so could lead to lawsuits and SEC enforcement actions for securities fraud.

A Crowdfunding issuer that is offering an incentive structure should indicate in their Offering Statement that the total number of securities to be issued in the offering might, when considering the shares to be issued according to the incentive structure, exceed the stated maximum offering amount, but that the maximum offering amount will not surpass \$5,000,000 in a 12-month period.

**(m) Indebtedness of the Issuer.** Rule 201(p) ([17 C.F.R. § 227.201\(p\)](#)), which corresponds to question 24 of Form C, requires the disclosure of the material terms of any indebtedness of the issuer, including the amount, interest rate, maturity date, and any other material terms.

**(n) History of Exempt Offerings.** Rule 201(q) ([17 C.F.R. § 227.201\(q\)](#)), which corresponds to question 25 on Form C, requires a description of each exempt securities offering conducted within the past three years prior to the filing of the Offering Statement, including: (1) the date, (2) the exemption which was relied upon, (3) the securities which were offered, and (4) the amount of securities sold and the use of proceeds therefrom.

**(o) Related Party Transactions.** Rule 201(r) ([17 C.F.R. § 227.201\(r\)](#)), which corresponds to question 26 on Form C, requires disclosure of any transactions between the issuer and related parties, the value of which exceeds: (i) five percent of the aggregate amount of funds raised under Regulation Crowdfunding during the 12 months preceding commencement of the Crowdfunding Offering, plus (ii) the target offering amount. See [Regulation Crowdfunding Compliance & Disclosure Interpretations, Question 201.02](#) for more information. For example, if an issuer sold \$100,000 under Regulation Crowdfunding in the past 12 months and is seeking to raise a target offering amount of \$400,000 in the next 12 months, then the issuer will need to disclose any related party transactions of more than \$50,000 (i.e.  $((100,000 + 400,000) \times 0.05)$ ).

**RELATED PARTY DEFINITION:**

According to Regulation Crowdfunding, the term "Related Party" includes: (i) directors or officers of the issuer; (i) holders of 20% or more of the issuers voting securities within the past 120 days prior to the commencement of the Crowdfunding Offering; (i) any promoter of the issuer if it was formed in the past three years; and (i) any family member of any of the foregoing individuals, which includes parents, grandparents, stepparents, parents-in-law, spouse or spousal-equivalent, siblings, step-siblings, siblings-in-law, children and adoptive relationships.

**(p) Financial Condition of the Issuer.** Rule 201(s) (17 C.F.R. § 227.201(s)), which corresponds to questions 27 and 28 on Form C, requires disclosure of the financial condition of the issuer covering each period for which financial statements are provided and a discussion of any material changes or trends during those relevant periods that are known to the management. The following table is a non-exhaustive list of the matters that issuers should discuss to satisfy this disclosure requirement:

No Prior Operating History	All Issuers	Prior Operating History
<ul style="list-style-type: none"> <li>- Current/Expected Operations</li> <li>- Financial Milestones</li> </ul>	<ul style="list-style-type: none"> <li>- Operational, Liquidity, and Other Challenges</li> <li>- Description of other sources of funds</li> <li>- Effect of proceeds/other financing, if any, on liquidity</li> <li>- Necessity of additional financing for the business</li> <li>- The business' expected cashflow rate.</li> </ul>	<ul style="list-style-type: none"> <li>- Results of Operations, Cash Flows, Stockholders' Equity, and whether each is representative of what investors can expect in the future</li> </ul>

**(q) Required Financial Statements.** Rule 201(t) (17 C.F.R. § 227.201(t)), which corresponds to question 29 on Form C, outlines the financial statement requirements of Regulation Crowdfunding. Compared to other regulations demanding audited financial statements, Regulation Crowdfunding's financial reporting requirements may be less burdensome and more cost-effective for specific issuer categories, like recently formed entities or those with smaller financing needs. First, issuers seeking to raise less than \$124,000 under Regulation Crowdfunding need only disclose the amounts of total income, taxable income, and total tax from their tax return for the most recently completed fiscal year.

The table below details the financial statement requirements and filing deadlines under Regulation Crowdfunding:

Offering Amount	120 Days or Less Since Beginning of Fiscal Year <sup>(1)</sup>	More Than 120 Days Since Beginning of the Fiscal Year
<b>Between \$124,000 and \$618,000</b>	Reviewed financial statements for the two fiscal years prior to the most recently completed fiscal year <sup>(1), (2)</sup>	Reviewed financial statements for the two fiscal years prior to the most recently completed fiscal year <sup>(2)</sup>
<b>Between \$618,000 and \$1,235,000 by a <u>First-Time Reg. CF Issuer</u></b>	Reviewed financial statements for the two fiscal years prior to the most recently completed fiscal year <sup>(1), (2)</sup>	Reviewed financial statements for the two most recently completed fiscal year <sup>(2)</sup>
<b>Over \$618,000 by a <u>Repeat Reg. CF Issuer</u> or over \$1,235,000 by a <u>First-Time Reg. CF Issuer</u></b>	Audited financial statements for the two fiscal years prior to the most recently completed fiscal year <sup>(1), (2)</sup>	Audited financial statements for the two most recently completed fiscal year

(1) If available: (i) the company must file financial statements for the two most recently completed fiscal years instead of financial statements for the two fiscal years before the most recently completed fiscal year.

(2) If available, the company must provide any reviewed or audited financial statements with a preference for audited financial statements.

**(i) RECENTLY FORMED ISSUERS.** Regulation Crowdfunding’s financial reporting requirements also depend on the issuer’s date of formation. For example, an issuer conducting a Crowdfunding Offering between the date of its inception and 120 days following its initial annual balance sheet date will only need to file a balance sheet from inception till the balance sheet date. Conversely, if an issuer conducts a Crowdfunding Offering more than 120 days after its first annual balance sheet date, the date of the most recent annual balance sheet sets a precedent for the period the financial statements must cover.

To illustrate, consider an issuer with a December 31 fiscal year-end that begins a Regulation Crowdfunding offering in May 2023:

Date of Formation of Company	Balance Sheet Date	Date of Other Financial Statements
May 4, 2023	As of inception	Not applicable
May 4, 2022	As of December 31, 2022	For the period from May 4, 2022 (inception) to December 31, 2022
May 4, 2021	As of December 31, 2022, and 2021	For the period from May 4, 2021 (inception) to December 31, 2021, and the year ended December 31, 2022

**(r) Progress Reports.** Rule 201(v) (17 C.F.R. § 227.201(v)) requires written updates regarding the progress of the issuer according to any Progress Reports on Form C-U (see Section 6.2 for more information).

**(s) Location of Available Information.** Rule 201(w) (17 C.F.R. § 227.201(w)), requires disclosure of where on the issuer’s website investors can find its Annual Reports (discussed and defined below), and the date by which it will be posted thereon. This disclosure requirement is generally found in the introductory sections of the Offering Statement.

**(t) Disqualification of Predecessors.** Rule 201(x) (17 C.F.R. § 227.201(x)), which corresponds to questions 3 and 30 on Form C, requires the issuer to disclose whether it or any of its predecessors failed to comply with Regulation Crowdfunding’s ongoing reporting requirements.

**(u) Catch-all Provision.** Rule 201(y) (17 C.F.R. § 227.201(y)), which corresponds to question 31 on Form C, is a catch-all provision that requires the disclosure of any information necessary to ensure that any other information provided in the Offering Statement is not misleading. This ensures that issuers disclose all material information, not just the information that is required under Regulation Crowdfunding and according to Form C.

**(v) Filing Requirement For Testing the Waters Materials and Advertisements.** Rule 201(z) (17 C.F.R. § 227.201(z)), which corresponds to question 11 on Form C, requires the issuer to file any written communication or broadcast script provided in accordance with the provisions related to advertisement and solicitations of interest (see Section 7.1 for more information).

## 5.3 Amendments to the Offering Statement on Form C/A

Crowdfunding Issuers must file an amendment to their Form C using Form C/A within five business days of any material change. The term 'material change' encompasses significant changes to the issuer, its business, the Crowdfunding Offering, or material events that would impact an investor's decision to buy or sell the issuer's securities. Potential material changes include, but are not limited to:

- Significant changes in financial condition, like a sudden loss of a primary revenue source or acquiring significant debt;
- Alterations in the offering terms, which could include changes to the price of the securities, the target amount of the raise, or the deadline for the fundraising campaign;
- Changes in ownership or management;
- Product or service updates, such as announcements about the failure of a critical product, changes in business models, or obtaining/losing significant contracts;
- The initiation or resolution of a significant lawsuit or regulatory action against the issuer;
- Significant amendments to the business plans, like changes to how the issuer plans to operate or utilize the investment capital;
- Anything that might significantly change the value of the securities being offered, such as dividend announcements, stock splits, or mergers.

Once a material change occurs, an issuer must offer investors the opportunity to reconfirm any outstanding investment commitment.

### EXCEPTION TO REQUIREMENT TO PROVIDE AMENDMENTS TO INVESTORS:

The instructions to Regulation Crowdfunding Rule 203(a) (17 CFR § 227.203(a)(2)) state that an issuer does not need to provide investors with any Offering Statement Amendments on Form C/A if their Intermediary makes available on its website the information required thereunder. As such, Intermediaries customarily provide these updates on their platform.

### MATERIAL CHANGE TIMELINE:

Issuers contemplating an action that would result in a material change will want to wait until after they perform a closing of their Crowdfunding Offering. By closing on any investment commitments prior to the material change, there will be no investment commitments to reconfirm, which will reduce the burden of complying with the reconfirmation requirement (see Section 5.4).

## 5.4 Cancellations and Reconfirmations of Investment Commitments

**(a) Reconfirmations.** If a material change to the terms of an offering or information in the Offering Statement occurs, the Intermediary must notify any investors who have made investment commitments and inform them that they have five business days to reconfirm their investment commitment (17 CFR § 304(c)). If an investor fails to reconfirm their investment, then the Intermediary will, within five business days: (i) notify the investor that their investment commitment has been cancelled and inform them of the reason and amount of funds to be returned, and; (ii) direct the return of such funds.

**(b) Cancellations.** Except in the case of a material change, Regulation Crowdfunding allows investors to cancel their investment commitments for any reason until 48 hours prior to the target offering deadline identified in the Offering Statement (17 CFR § 227.304(a)). If a material change to the terms of an offering or to information in the Offering Statement occurs within five business days before the target offering deadline, then the issuer must extend the offering to allow the investors five business days to reconfirm their investments (17 CFR § 227.304(c)(2)).

**(c) Return of Investor Funds.** If an issuer does not complete an offering, its Intermediary must, within five business days (17 CFR § 227.304(d)):

- Give notice to each investor of the cancellation of the offering, the reason for the cancellation, and the amount of refund they can expect;
- Direct any refunds; and
- Prevent investments in the offering on their platform.

## 5.5 Early Closing

A Crowdfunding Offering that reaches the target offering amount prior to the offering deadline may perform an “Early Closing” if the following conditions are satisfied:

- The Crowdfunding Offering must have been open for at least 21 days and will remain open for at least 21 days following the Early Close;
- The Intermediary provides notice to current or potential investors and investors who have made investment commitments of the new deadline, the right to cancel any investment commitments until 48 hours before the new deadline, and whether the issuer will accept investment commitments within 48 hours prior to the new deadline;
- The new offering deadline will occur at least five business days after the Intermediary provides notice to investors of the new deadline;
- At the time of the new offering deadline, the issuer continues to meet or exceed the target offering amount (17 CFR § 227.304(b)(1)-(4)).

### DEADLINE CHANGES ARE A MATERIAL CHANGE:

A change in the offering deadline is considered a material change which requires a reconfirmation period (see Section 7.1(g) for more information).

SECTION 6

# Ongoing Reporting Requirements



## SECTION 6: ONGOING REPORTING REQUIREMENTS

Other than private placement offerings under Regulation D or sales of securities that rely on certain statutory exemptions from the registration requirements, Regulation Crowdfunding has the least intensive ongoing reporting requirements. Further, the issuer's intermediary can and will perform a number of these obligations.

The goal of Regulation Crowdfunding's ongoing reporting requirements is to keep investors informed about their investment, the issuer, and the details of the Crowdfunding Offering. To comply, issuers need to file the following relevant disclosure documents with the SEC, except in certain cases discussed below: (i) Progress Updates on Form C-U; (ii) Required Amendments on Form C/A; (iii) Annual Reports on Form C-AR (and any amendments on Form C-AR/A); and (iv) A Termination Report on Form C-TR. For filing purposes, each of these documents is considered separate and distinct from each other. However, all of them utilize Form C, published online by the SEC, as their base.



### 6.1 The Annual Report on Form C-AR

The primary ongoing reporting requirement of Regulation Crowdfunding is the issuer's duty to file and publish on their website an annual report on Form C-AR within 120 days after the end of the fiscal year covered by the report (the "Annual Report") ([17 CFR § 227.202\(a\)](#)). For example, an issuer with a December 31 fiscal year-end is required to file an Annual Report on or before April 30 (or April 29 in a leap year). If April 30 falls on a Saturday or Sunday, then the filing period for the annual report would end on the following Monday.



The Annual Report is a revised version of the Offering Statement containing financial statements (reviewed or audited, as applicable) for the period covered by the report and, when necessary, updates to the following sections of the Offering Statement:

- [Identifying Information](#)
- [Directors and Officers of the Company](#)
- [Principal Security Holders](#)
- [Business Section](#)
- [Human Capital](#)
- [Risk Factors](#)
- [Terms of the Offering; Capital Structure](#)
- [Indebtedness of the Issuer](#)
- [History of Exempt Offerings](#)
- [Related Party Transactions](#)
- [Financial Condition of the Issuer](#)
- [Disqualification of Predecessors](#)

#### [AMENDMENTS TO THE ANNUAL REPORT ON FORM C-AR/A:](#)

Using Form C-AR/A, Crowdfunding Issuers must file any necessary amendments to the Annual Report to disclose any material changes as soon as practicable after the discovery of the need for such amendment. The circumstances requiring an amendment to the Annual Report are identical to the circumstances requiring an amendment to the Offering Statement ([see Section 5.3](#)).

**(a) Financial Statement Requirements.** Crowdfunding Issuers are not required to file audited or reviewed financial statements with their Annual Report on Form C-AR. Instead, the financial statements filed with Form C-AR need only be certified by the principal executive officer of the issuer as true and complete in all material respects.

#### [AVAILABILITY OF OTHER FINANCIAL STATEMENTS:](#)

Issuers must file financial statements for the two most recently completed fiscal years instead of financial statements for the two fiscal years before the most recently completed fiscal year.

## [6.2 Progress Reports on Form C-U](#)

Crowdfunding Issuers must file progress reports on Form C-U with the SEC and their Intermediaries within five days of receiving investment commitments that reach 50% and 100% of the target offering amount for the Crowdfunding Offering ([17 CFR § 227.203\(a\)\(3\)\(i\)](#)). If the issuer accepts proceeds in excess of the original target offering amount, they must file a final Form C-U no later than five days following the offering deadline, which discloses the total amount of securities sold in the offering ([17 CFR § 227.203\(a\)\(ii\)](#)).

Conversely, Rule 203(a)(3)(iii) (17 CFR § 227.203(a)(3)(iii)) states that an issuer does not need to file progress reports on Form C-U according to subsections (a)(3)(i) and (ii) if their Intermediary provides frequent updates on the offering platform which include the same information (the “Progress Update Exception”). As a matter of course, Intermediaries regularly make these types of progress updates on their websites in satisfaction of the Progress Update Exception.

#### FINAL PROGRESS UPDATE REQUIREMENT:

Crowdfunding Issuers who qualify for the Progress Update Exception will need to ensure that they file a Form C-U to disclose the total amount of securities sold in the offering no later than five business days following the offering deadline (17 CFR 227.203(a)(3)(iii)).

### 6.3 The Termination Report on Form C-TR

Crowdfunding Issuers eligible to terminate their reporting requirements under Regulation Crowdfunding must file a Form C-TR to advise investors that it will cease ongoing reporting requirements.

**(a) Termination Requirements.** An issuer will qualify to terminate its ongoing reporting requirements and file a Form C-TR upon the occurrence of one of the following circumstances:

- (1) The issuer becomes an Exchange Act reporting company;
- (2) After its most recent sale under Regulation Crowdfunding, the issuer has filed at least one Annual Report and has fewer than 300 investors of record (see Section 10.1 for more information);
- (3) After its latest sale under Regulation Crowdfunding, the issuer has provided all required Annual Reports for the last three years, and its total assets are worth \$10,000,000 or less;
- (4) The issuer or a third party purchases all of the shares sold under the Crowdfunding Offering; or
- (5) The issuer dissolves or liquidates its business according to state law (17 CFR 227.202(b)).

SECTION 7

# Advertisements and Pre-Filing Communications

## SECTION 7: ADVERTISEMENTS AND PRE-FILING COMMUNICATIONS

Crowdfunding Issuers and persons acting on their behalf are prohibited from making general solicitations to the public (17 CFR § 227.204(a)(1)). However, there are a few exceptions to this prohibition for certain oral or written communications.

### 7.1 Permissible Advertisements

**(a) Rule 204(b) – Tombstone Notice.** There is a strict exception to the general advertisement prohibition for certain tombstone notices made by the issuer, or made on behalf of the issuer, which advertises certain terms of the Crowdfunding Offering, directs investors to the Intermediary’s platform, and includes no more than the following information:

- (1) A statement that the issuer is conducting a primary offering pursuant to Securities Act Section 4(a)(6) which discloses the name of the Intermediary and a link to the Intermediary’s platform;
- (2) The terms of the offering, which includes the number of securities offered, the nature of the securities (equity, debt, common, preferred, etc.), the price of the securities, the target offering deadline, the use of proceeds table and the issuer’s progress towards the target offering amount; and
- (3) Identifying information of the issuer, including its name, location, phone number, website, email address of the issuer’s representative (e.g., the president or chief executive) and a brief description of the business of the issuer. (17 CFR § 227.204(b)).

#### VIDEO NOTICES AND NON-OFFERING RELATED ADVERTISEMENTS:

Crowdfunding Issuers may advertise the terms of their offering in a video that complies with Rule 204(b). Moreover, issuers may continue to advertise their business products as normal if those advertisements do not reference their Crowdfunding Offering. See Regulation Crowdfunding Compliance & Disclosure Interpretations, Questions 204.02 and 03 for more information.

**(i) CONCURRENT OFFERINGS.** Issuers with concurrent offerings, one of which is under Regulation Crowdfunding, must ensure that: (1) any general solicitations made under the other offering; or (2) any references to the Crowdfunding Offering in the other offering’s disclosure documents are limited to Rule 204 tombstone information (see Section 7.1(a) for more information). If the disclosure document for the other offering is filed on EDGAR, the link required by Rule 204(b)(1) may not be a live hyperlink.

**(ii) INTERMEDIARY’S CHANNELS.** Under Rule 204(c) (17 C.F.R. § 227.204(c)), a Crowdfunding Issuer may communicate with investors and potential investors about the terms of an offering through communication channels provided by their Intermediary on its platform if the issuer identifies itself as such in all communications. Persons acting on an issuer’s behalf may also utilize this exception if such person identifies their affiliation.

**(b) Promoters & Promoter Compensation.** An issuer may pay a promoter to provide advertisement services that comply with the Notice Exception and the Intermediary’s Channels Exceptions (17 CFR § 227.205). However, any advertisement by a Promoter must clearly disclose the receipt, past or prospective, of any compensation paid or to be paid by the issuer.

## 7.2 Permissible Pre-Filing Communications; Solicitations of Interest

Rule 206 (17 CFR § 227.206) allows issuers to engage in verbal or written communication with potential investors before submitting an Offering Statement to gauge interest in purchasing their securities (a “Solicitation of Interest”). These communications can also include a way for interested parties to inform the issuer of their interest (an “Indication of Interest”), and an issuer may require such persons to provide their name, address, phone number, and email address in any Indication of Interest (17 CFR § 227.206(c)). A Solicitation of Interest adheres to Rule 206 if the communication specifies that:

- (1) The issuer is not requesting funds and will not accept them if received;
- (2) Offers to buy will be accepted once an Offering Statement is filed, and only via the Intermediary’s (or White Label) offering platform; and
- (3) Any indication of interest from a person is not an obligation or commitment to invest.

Issuers should be aware that advertisements and solicitations of interest connected to securities offerings count as offers to sell securities and are, therefore, subject to securities anti-fraud provisions.

**(a) Information Not Constituting an Offer to Buy or Sell a Security.** Before filing their Offering Statement, Crowdfunding Issuers can continue to distribute information or make communications that would not constitute a public offer to sell their securities. Such information or communications can include factual business information that does not “condition the public mind” or “stir public interest” in an issuer or a securities offering.

### A PUBLIC “OFFER” OF SECURITIES

The SEC has interpreted the term “offer” broadly and has explained that “the publication of information and publicity efforts, made in advance of a proposed financing which has the effect of conditioning the public mind or arousing public interest in the issuer or in its securities constitutes an offer...” (Release No. 33-8591 (July 19, 2005)).

SECTION 8

# Resale Restrictions

## SECTION 8: RESALE RESTRICTIONS

Securities purchased in a Crowdfunding Offering are classified as restricted and cannot be transferred or sold during the 12-month “Lock-up Period” after an investor gains control of their securities (i.e., after the closing of a Crowdfunding Offering), unless such securities are sold:

- (1) To the issuer of the securities;
- (2) To an Accredited Investor (see [Section 4.1\(a\)](#) for more information);
- (3) As a part of a registered primary offering; or
- (4) To a member of the investor’s family, a trust they control, or in connection with the death or divorce of the investor or similar circumstances (see [Section 5.2\(o\)](#) for a definition of the term “family”).

After the Lock-Up Period, an investor must find an exemption from the Securities Act’s registration requirements to sell their securities unless the issuer registers the class of securities held by the investor.

SECTION 9

# Co-Issuer Offerings



## SECTION 9: CO-ISSUER OFFERINGS

In November 2020, the SEC promulgated Rule 3a-9 of the Investment Company Act of 1940 (17 CFR § 270.3a-9) (“Rule 3a-9” and the “1940 Act”, respectively) to allow Crowdfunding Offerings by co-issuers (“Co-Issuer Offerings”), a type of Crowdfunding Offering by two entities:

- (1) An entity that contains the operations of the business (the “Operating Company”); and
- (2) An entity formed for the sole purpose of directly acquiring, holding, and disposing of securities issued by a single Crowdfunding Issuer and raising capital in one or more offerings made in compliance with Regulation Crowdfunding (17 CFR 270.3a-9(a)(1)) (the “Crowdfunding Vehicle”, and together with the Operating Company, the “Co-Issuers”).

In a Crowdfunding Offering by the prior entities, the Operating Company and the Crowdfunding Vehicle are considered Co-Issuers of their securities in a single offering which will not trigger the 1940 Act’s registration requirements.

### 9.1 Rule 3a-9

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Rule 3a-9 is an exemption from the requirement to register as an investment company under the 1940 Act. Under Rule 3a-9, a Crowdfunding Issuer may utilize a Crowdfunding Vehicle to facilitate investments in their business, and the Crowdfunding Vehicle will not be considered an investment company under the 1940 Act if the Crowdfunding Vehicle:

- (1) Is organized and operated for the sole purpose of directly acquiring, holding, and disposing of securities issued by a single Operating Company and raising capital in one or more offerings made in compliance with Regulation Crowdfunding;
- (2) Does not borrow money and uses the proceeds from the sale of its securities solely to purchase a single class of securities of a single Operating Company;
- (3) Issues only one class of securities in one or more offerings under Regulation Crowdfunding in which the Crowdfunding Vehicle and the Operating Company are deemed to be Co-Issuers;
- (4) Receives a written undertaking from the Operating Company to: (a) fund or reimburse the expenses associated with its formation, operation, or winding up; (b) receive no compensation for the provision of services; and (c) any compensation paid for the operation of the Crowdfunding Vehicle is paid solely by the Operating Company;
- (5) Maintains the same fiscal year-end as the Operating Company;
- (6) Maintains a one-to-one relationship between the number, denomination, type, and rights of Operating Company securities it owns and the number, denomination, type, and rights of its outstanding securities;

- (7) Seeks instructions from the holders of its securities regarding: (a) the voting of the Operating Company securities it holds (and votes the Crowdfunding Issuer securities only in accordance with such instructions); and (b) participating in tender or exchange offers or similar transactions conducted by the Crowdfunding Issuer (and participates in such transactions only in accordance with such instructions);
- (8) Receives, from the Operating Company, all disclosures and other information required under Regulation Crowdfunding, and promptly provides such disclosures and other information to the investors and potential investors in the Crowdfunding Vehicle's securities and to the relevant Intermediary; and
- (9) Provides to each investor the right to direct the Crowdfunding Vehicle to assert the rights under State and Federal law that the investor would have if he or she had invested directly in the Operating Company and provides to each investor any information that it receives from the Operating Company as a shareholder of record thereof (17 CFR 270.3a-9(a)(1) – (9)).

While an issuer must satisfy all of Rule 3a-9's to rely on the exemption, the most important requirements of Rule 3a-9 for issuers are subsections (a)(3), (6), and (9) with regards to the securities being offered by the Co-Issuers. As a result of those provisions, the following principles apply:

- (A) The Crowdfunding Vehicle can only have one class of securities;
- (B) The Crowdfunding Vehicle can only hold one class of securities of a single issuer;
- (C) The Operating Company may have any number of classes of securities, each with different rights associated therewith;
- (D) (i) The Crowdfunding Vehicle's securities must be identical to the class of securities being offered by the Operating Company in the Co-Issuer Offering; (ii) the Operating Company must not issue those securities to any person other than the Crowdfunding Vehicle; and (iii) the cost of the Crowdfunding Vehicle's securities is identical to the cost of the securities being offered by the Operating Company; and
- (E) The Co-Issuers must maintain a one-to-one ratio of Crowdfunding Vehicle securities to Operating Company securities that are issued in the Co-Issuer Offering in terms of the number, management participation rights, voting rights, distribution rights, etc., thereof.

## 9.2 Co-Issuer Offering Structure and Disclosure Requirements

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Co-Issuer Offerings involve a simultaneous two-step process at the offering's closing. First, the Crowdfunding Vehicle closes on investments and issues its securities. Then, using the proceeds from this sale, the Crowdfunding Vehicle buys an equivalent amount of the Operating Company's securities. This creates a structure where each security an investor holds in the Crowdfunding Vehicle corresponds to one security of the Operating Company held by the Crowdfunding Vehicle.

## 9.3 Co-Issuer Disclosure Requirements

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Under Regulation Crowdfunding, the Offering Statement must include all necessary disclosures for each Co-Issuer (17 CFR § 227.201, Introductory Paragraph). To minimize compliance costs, the organizational forms and capital structures of Crowdfunding Vehicles are simplified. Typically, the securities of a Crowdfunding Vehicle are non-voting, lack information rights, and include standard drag-along rights. Moreover, the organizational documents of the Crowdfunding Vehicle usually restrict its functions to only those activities required to comply with Rule 3a-9.

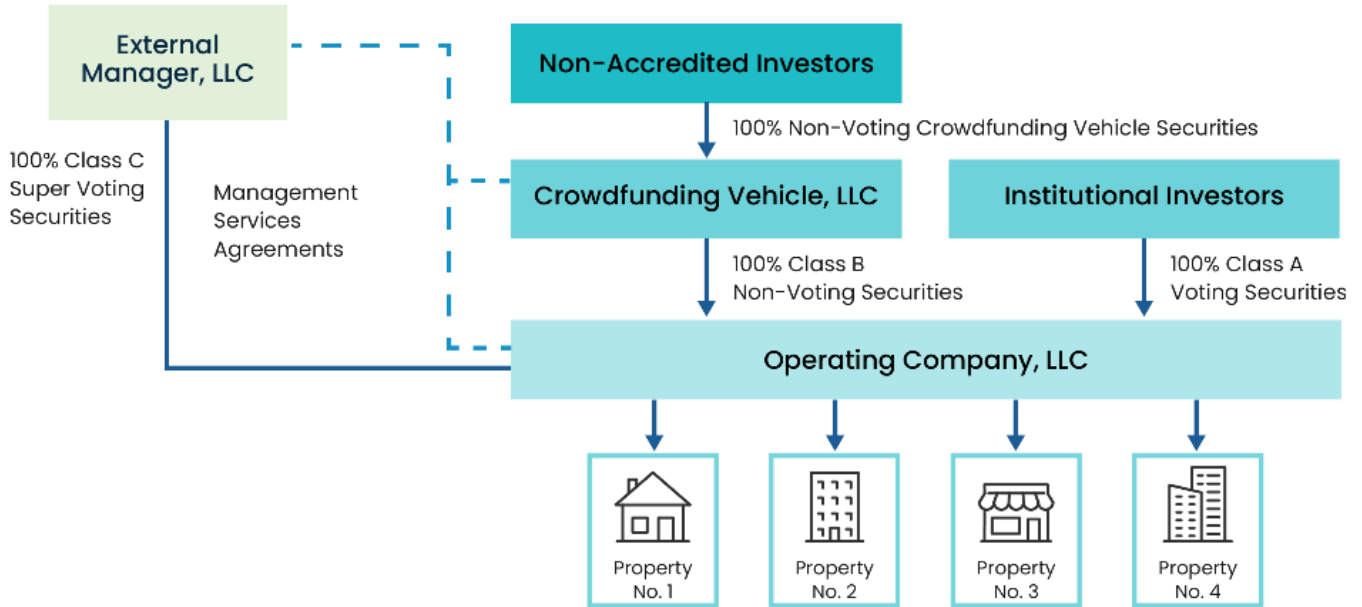
The simplified nature of Crowdfunding Vehicles, along with the minimal rights attached to their securities, eliminates the need for complex disclosures in the Offering Statement about certain business functions, such as voting the shares of the Crowdfunding Vehicle. Following this model, the only specific disclosures in a Co-Issuer Offering that an issuer and its securities attorney need to include in their Offering Statement will relate to:

- (1) Rule 3a-9 and the involvement of a Crowdfunding Vehicle, where relevant, including on the fill-in-the-blank portion of the Form C;
- (2) Identifying information on the Crowdfunding Vehicle (see Section 5.2(a) for more information);
- (3) Information about the securities of the Crowdfunding Vehicle (see Section 5.2(i) for more information);
- (4) Security ownership of the Crowdfunding Vehicle, which should be "none" prior to the offering (see Section 5.2(c) for more information);
- (5) Risk factors associated with the Co-Issuer Offering (see Section 5.2(f) for more information);
- (6) Disclosure of past exempt offerings by the Crowdfunding Vehicle according to (see Section 5.2(n) for more information); and
- (7) Financial Statements of the Crowdfunding Vehicle (see Section 5.2(q) for more information).



## 9.4 Customary Co-Issuer Offering Structure

Crowdfunding Vehicles may adopt any organizational structure. Most are limited liability companies because of their flexibility and freedom under state corporation laws. One particularly useful freedom of LLCs is that they can be externally managed by an affiliate (or any person, natural or otherwise). For example, imagine a real estate investment fund structured as a limited liability company that plans a Co-Issuer Crowdfunding Offering. Its goal is to expand its investor base and raise up to \$5,000,000 from non-Accredited Investors over a rolling 12-month period while keeping its balance sheet clean for Accredited Investors. A Co-Issuer Offering organizational chart of this business may look like as follows:



SECTION 10

# Exchange Act Section 12(g) Implications for Crowdfunding Issuers

## SECTION 10: EXCHANGE ACT SECTION 12(G) IMPLICATIONS FOR CROWDFUNDING ISSUERS

Section 12(g) of the Exchange Act ([15 U.S.C § 78l\(g\)](#)) requires issuers to register classes of securities with the SEC when their gross assets and the number of record holders exceed specified thresholds. As of now, Section 12(g) stipulates that if:

- (1) the issuer has total assets of more than \$10 million; and
- (2) the securities of the issuer are Held of Record by more than (a) 2,000 persons; or (b) 500 non-accredited investors as defined under Rule 501(a) of Regulation D;

Then the issuer must file a registration statement on Form 10-12g, registering the relevant class of securities which exceeds the threshold under clause (2) above. Moreover, if an issuer exceeds both thresholds it has 120 days to register the relevant class of securities. Once it files a registration statement, such an issuer must begin compliance with the Exchange Act's continuous reporting obligations. This includes compliance with Exchange Act Section 15(d), which covers annual, quarterly, and periodic reports, and Section 16, which pertains to insider transactions in the securities of a public company.

### DEFINITIONS:

**"Total Assets"** means the total assets as shown on the issuer's balance sheet or the balance sheet of the issuer and its subsidiaries consolidated, whichever is larger ([17 C.F.R. § 240.12g5-2](#)).

**"Held of Record"** or **"Holder of Record"** means: (i) each person who is identified as the owner of record with the company's registrar for the particular class of securities, and (ii) if the shareholders' list was improperly maintained by the registrar, each person who would have been a record holder had it been properly maintained ([17 C.F.R. § 240.12g5-1](#)).

Given the significant implications, inadvertently surpassing the Section 12(g) thresholds can be a costly error that all companies should strive to avoid unless they intentionally choose to do so. This is especially crucial for most Crowdfunding Issuers, who typically have fewer resources or funds to meet the registration and ongoing reporting requirements with respect to Regulation Crowdfunding. Fortunately, Crowdfunding Issuers can utilize several exemptions to help them avoid triggering Section 12(g)'s registration requirements.

### 10.1 Held of Record Calculation

As noted above, under Section 12(g), the "Held of Record" calculation includes: (i) each person who is identified as the owner of record at the company's registrar for the particular class of securities; and (ii) if the shareholders' list was improperly maintained, each person who would have been a record holder had it been properly maintained ([17 C.F.R. § 240.12g5-1](#)). However, there are a few exclusions and special rules that apply when calculating the thresholds that are relevant in the Regulation Crowdfunding context.

**(a) Special Rules** . The following special rules apply when calculating holders of record under Section 12(g):

- (1) Securities owned by a corporation, partnership, or trust, or other organization are treated as held by one person (17 C.F.R. § 240.12g5-1(a)(2));
- (2) Securities owned by one or more persons as trustees, executors, guardians, custodians, or in other fiduciary capacities with respect to a single trust, estate or account are treated as Held of Record by one person (17 C.F.R. § 240.12g5-1(a)(3));
- (3) Co-owners of a security are counted as one person (17 C.F.R. § 240.12g5-1(a)(4));
- (4) Securities registered in substantially similar names where the issuer has reason to believe that such names represent the same person may be treated as held by one person (17 C.F.R. § 240.12g5-1(6)); and
- (5) To determine how many record holders there are, issuers must count all holders of the same class of securities issued under Regulation Crowdfunding regardless of whether they obtained those securities via a Crowdfunding Offering. See Regulation Crowdfunding Compliance & Disclosure Interpretations, Questions 202.01 and 03 for more information.

**(b) Employee Compensation Plan Securities**. Securities held by individuals who received them through an employee compensation plan, which is exempt from the Securities Act’s registration requirements, are excluded from the holder of record calculation (17 C.F.R. § 240.12g5-1(8)(A)).

Additionally, securities acquired in exempt securities offerings, which are issued by the issuer, its predecessor, or an acquired company in exchange for securities that are already excludable under (i) in the prior list, are excluded from the “Holder of Record” calculation. This exclusion applies if the recipients were eligible under Securities Act Rule 701(c) (17 C.F.R. § 230.701) when the original securities were issued.

#### NON-EXCLUSIVE SAFE-HARBOR:

**Employee Compensation Plans.** An issuer can consider a person to have received securities under an employee compensation plan if the plan and the recipient met specific conditions set out in § 230.701(c);

**Reasonable Belief that an Exemption Applied.** For the purposes of Section 12(g), an issuer can treat securities as having been issued in a transaction exempt from registration requirements if, at the time of issuance, the issuer reasonably believed that the transaction was exempt (17 C.F.R. § 240.12g5-1(8)(ii)).

#### EXEMPT OFFERINGS INVOLVING EMPLOYEE BENEFITS PLANS

Rule 701 is a Securities Act exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation (17 C.F.R. § 240.12g5-1(8)(i)(B)).

**(c) Co-Issuer Securities.** An Operating Company can exclude securities issued by the Crowdfunding Vehicle to the extent that such securities are held by natural persons. Securities held by non-natural persons are not excludable and must be included in calculating the Holders of Record for both Co-Issuers (17 C.F.R. § 240.12g5-1(9)).

## 10.2 Exemptions

**(a) Exemption for Crowdfunding Offerings.** Under Rule 12g-6 (17 C.F.R. § 240.12g-6), securities issued in a Crowdfunding Offering are excluded from the Section 12(g) Holders of Record calculation if the following criteria apply:

- (1) The issuer is current in its ongoing annual reports;
- (2) The issuer has assets of \$25 million or less as of the end of the most recent fiscal year; and
- (3) The issuer has a transfer agent for the securities issued in the Crowdfunding Offering.

### RULE 12G-6(B) TRANSITION PERIOD:

A Crowdfunding Issuer that surpasses the asset threshold specified in Rule 12g-6(a)(2) would therefore be required to register a class of securities under Section 12(g), is allowed a transition period ending on the day before the last day of the fiscal year which is two years after the issuer first became ineligible to exclude the securities issued under Regulation Crowdfunding from being counted as being Held of Record (17 C.F.R. § 240.12g-6(b)).

The transition period ends immediately if the issuer fails to comply with their ongoing reporting obligations under Regulation Crowdfunding. In such a case, the issuer must file a registration statement to register that class of securities under Section 12(g) within 120 days of the transition period's termination.

**(b) Exemption for Classes of Securities.** Rule 12g-1 exempts issuers from registering a class of securities if the issuer has: (i) total assets of less than or equal to \$10 million; or (ii) if their equity securities are held by fewer than 2,000 persons or 500 non-accredited investors (17 C.F.R. § 240.12g-1). The term “class of securities” is defined to include all securities of an issuer of a substantially similar character and with respect to which the holders of such securities enjoy substantially similar rights and privileges.



SECTION II

# Conclusion

## SECTION 11: CONCLUSION

Regulation Crowdfunding, as detailed herein, stands out as a transformative regulatory framework designed to democratize access to equity financing for startups and small businesses. It offers a structured yet flexible avenue for these early-stage entities to connect with potential investors through the “crowd”, or the broader public, a domain previously reserved for accredited investors. By stipulating clear guidelines regarding offering amounts, investor limitations, intermediary involvement, and issuer eligibility, this regulation carefully balances the dual objectives of facilitating capital formation and ensuring investor protection.

The success of Regulation Crowdfunding hinges on rigorous adherence to the rules and regulations thereunder, including transparent disclosure through the Offering Statement on Form C and ongoing reporting requirements. These provisions not only promote an informed investing environment but also underpin the integrity and sustainability of crowdfunding as a viable mechanism to raise capital. As we move forward, the true impact of Regulation Crowdfunding on the investment landscape will depend on the collective efforts of issuers, intermediaries, and investors in nurturing an ecosystem of innovation, growth, and accessible investment opportunities.